

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

DR. STEVEN M. DENENBERG, Plaintiff, vs. DR. DAVID DAVTYAN, DR. BRUCE KATZ and DR. BILL KIM, Defendants.))))))))))))	8:08CV497 ORDER and REPORT AND RECOMMENDATION
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On March 12, 2009, the plaintiff was ordered to accomplish the following tasks no later than April 1, 2009: (1) effect service on the defendants and file proof of same with the court or (2) show cause why this case should not be dismissed without prejudice for failure to effect service within the time limit specified in Fed. R. Civ. P. 4(m).

Defendants Katz and Kim

The record now shows that summons and copies of the complaint were served on defendants Dr. Bruce Katz and Dr. Bill Kim on March 23, 2009. Their answers or responses to the complaint were due April 13, 2009, but neither defendant has filed any response to the complaint. Plaintiff will be ordered to obtain entries of default as to defendants Katz and Kim and to file motions for default judgment no later than June 1, 2009.

Defendant Davtyan

The record does not show that defendant Davtyan was ever served.

Rule 4(m) provides:

If a defendant is not served within 120 days after the complaint is filed, the court — on motion or on its own after notice to the plaintiff — ***must dismiss the action without prejudice against that defendant*** or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must

extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1).

Plaintiff was already granted an extension of time in which to effect service on Dr. Davtyan, and the court's March 12, 2009 order provided notice to the plaintiff that his claims against Dr. Davtyan could be dismissed without prejudice for failure to effect service. The plaintiff did not ever file a showing of cause explaining why his claims against Dr. David Davtyan should not be dismissed for failure to timely effect service.

ORDER

IT IS ORDERED that plaintiff is given until and including **June 1, 2009** to obtain entries of default and file motions for default judgment against defendants, Dr. Bruce Katz and Dr. Bill Kim, pursuant to Fed. R. Civ. P 55. Failure to do so will result in a recommendation that plaintiff's claims against them be dismissed without prejudice for failure to prosecute.

RECOMMENDATION

IT IS RECOMMENDED that plaintiff's claims against Dr. David Davtyan be dismissed without prejudice for failure to prosecute and for failure to effect service within the time required by Fed. R. Civ. P. 4(m) as extended by the court's Order of March 12, 2009 (Doc. 4).

DATED May 4, 2009.

BY THE COURT:

s/ F.A. Gossett
United States Magistrate Judge